

T-1399

E

98

L3A4

D

1

LIBRARY, DEPT. OF THE INTERIOR

44236

DEPARTMENT OF THE INTERIOR

LIBRARY USE ONLY

OFFICE OF INDIAN AFFAIRS

WASHINGTON, D. C.

-O-

HANDBOOK OF INDIAN LAND
POLICY AND MANUAL OF PROCEDURES

DEPARTMENT OF THE
INTERIOR
LIBRARY

DOI Library

percent of all Indian lands and 35 percent of the allotted lands.

¹²⁶ Sec. 1 prohibits further allotment, but by sec. 18 the whole act may be rejected by a negative vote of a majority of eligible voters of a band or tribe.

¹²⁷ Sec. 4.

These heirship tracts are potentially one of the most important of the Indian resources. (P. 15.)

The present Federal policy and objectives relating to Indian land have recently been stated in a Handbook of Indian Land Policy and Manual of Procedures prepared by the Office of Indian Affairs.¹²⁸

By exchange of allotments for assignments the problem of the sale and partition of inherited lands is finding a solution and the federal Indian land policy is being carried forward. Section 5 of the Act of June 18, 1934,¹²⁹ has provided for the acquisition of land by the Secretary of the Interior for an Indian tribe, through purchase, gift, exchange, or assignment, or through relinquishment of land by individual Indians. It has been held that the purpose of "providing land for Indians" is served by an exchange transaction whereby an individual Indian transfers allotted land to the tribe in exchange for an assignment of occupancy rights in the same or in another tract, since the tribe

¹²⁸ The primary object of Indian land policy is to save and to provide for the Indian people adequate land, in such a tenure and in accordance with such proper usage that they may subsist on it permanently by their own labor.

Indian land policy shall have for its purpose the organization and consolidation of Indian lands into proper units, considering the use to be made of the land, the type of labor and capital investment to be applied thereon, and the technical capacities and habits of co-operation of the Indians concerned.

Indian land policy definitely looks toward the substitution of Indian use for non-Indian use of Indian lands.

Implicit in all of the above is the responsibility of affording the Indians the necessary credit and technical training to make possible the best economic use of their lands.

Indian land tenure policy shall be searchingly adapted to various solutions not only as to whole tribes, but also as to natural communities within any particular tribe, and where the facts so indicate, to individual cases.

Indian land policy should take into account and should seek to contribute to the solution of the land policy problems of the Government as a whole.

In the protection and enlargement of an adequate land base, due consideration must be given to the preservation of those Indian cultural, social, and economic values and institutions which have in the past sustained, and are now sustaining, their economic and spiritual integrity and which may hold important possibilities for the future.

Indian land policy shall seek the most rapid possible reduction of uneconomic and nonproductive administrative expenditures, particularly in connection with the management of heirship lands.

In view of the limited amount of funds available for the enlargement of the Indian land base, preference in the application of these funds shall be given to those reservations showing a readiness to co-operate in order to secure the advantages, and to those showing a critical shortage of resources; and within these reservations, preference shall be given to those communities definitely Indian in character.

In the process of simplifying the ownership pattern on Indian reservations, tribal funds, IRA land-acquisition appropriations, or other applicable funds may be used (in default of other and preferable methods) for the consolidation of Indian-owned lands whenever such use supplies an essential element in improving the economy of the tribe, and reducing costs of administration.

The acquisition of land for Indians shall be for Indian use and upon adequate evidence that it will be used by Indians. In all cases where it is practicable, the acquisition should be carried out in response to the request of the Indians and upon evidence furnished by them of their determination to use the land.

Funds accruing to tribes from the past or present disposal of capital assets shall be used to the largest feasible extent for the creation of new productive resources. (Handbook, *supra*, Pt. III (1938), pp. 1-3.)

¹²⁹ 48 Stat. 984, 25 U. S. C. 465.

through this transaction acquires a definite interest in the land over and above the transferor's retained occupancy right.¹³⁰ By means of this exchange provision the tribe may acquire Indian allotments or heirship lands and may designate various parcels of tribal land which are not needed for any tribal enterprise as available for exchange. Where a tribe has funds in its tribal treasury or in the United States Treasury, it may decide to use a portion of such funds to buy up lands from Indians who have holdings in the area under consideration. Where the land is in heirship status, if the tribe and all the heirs are unable to agree among themselves on the terms of purchase, the Secretary of the Interior may prescribe the method of sale and valuation.

There is no reason why a tribe may not purchase allotted lands in heirship status where such lands are offered for sale by the Secretary of the Interior. The mechanics of such a transaction are set forth in a memorandum of the Solicitor of the Department of the Interior¹³¹ in the following words:

It will be noted that section 372 of United States Code, title 25, requires that upon completion of the payment of the purchase price a patent in fee shall issue to the purchaser. Does this requirement make impossible sales to individual Indians, to Indian tribes, or to the Secretary of the Interior in trust for such tribes or individuals?

So far as direct sales to Indian tribes are concerned, there is nothing to prevent the issuance of a patent in fee to an Indian tribe. The issuance of patents to an Indian tribe is provided for by the following statutes: Act of January 12, 1891 (26 Stat. 762), providing for patents to Mission Bands; treaty with Cherokees, December 29, 1835 (7 Stat. 478) granting land to Cherokee Nation.

After issuance of such patent, however, an organized tribe might, under section 5 of the act of June 18, 1934, surrender legal title to the land, if it so chose, to the United States, retaining equitable ownership of the land. A tribe not within the provisions of that act could not surrender such legal title.

The necessity for issuance of a fee patent which arises when heirship land is sold by the Secretary of the Interior, does not arise where the conveyance of land is made by all the interested heirs. Such conveyance, made on a restricted deed form, conveys only the same interest as is held by the heirs.

The question of issuing fee patents to Indian purchasers of land does not arise on reservations subject to the act of June 18, 1934, since on such reservations direct sales to individual Indians are prohibited. A related question, however, arises with respect to sales of land to the United States in trust for a tribe or individual Indian under the provisions of section 5 of the said act, which authorizes the Secretary of the Interior,

"to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians."

The statute in question specifically provides, with respect to the tenure of lands so acquired:

"Title to any lands or rights acquired pursuant to this act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation."

¹³⁰ Memo Sol. I. D., April 4, 1935.

¹³¹ Memo Sol. I. D., August 14, 1937.

III. GENERAL POLICY AND OBJECTIVES RELATING to INDIAN LAND

The primary object of Indian land policy is to save and to provide for the Indian people adequate land, in such a tenure and in accordance with such proper usage that they may subsist on it permanently by their own labor.

Indian land policy shall have for its purpose the organization and consolidation of Indian lands into proper units, considering the use to be made of the land, the type of labor and capital investment to be applied thereon, and the technical capacities and habits of co-operation of the Indians concerned.

Indian land policy definitely looks toward the substitution of Indian use for non-Indian use of Indian lands.

Implicit in all of the above is the responsibility of affording the Indians the necessary credit and technical training to make possible the best economic use of their lands.

Indian land tenure policy shall be searchingly adapted to various solutions not only as to whole tribes, but also as to natural communities within any particular tribe, and where the facts so indicate, to individual cases.

Indian land policy should take into account and should seek to contribute to the solution of the land policy problems of the Government as a whole.

E
98
L3A4
(2)

44236

In the protection and enlargement of an adequate land base, due consideration must be given to the preservation of those Indian cultural, social, and economic values and institutions which have in the past sustained, and are now sustaining, their economic and spiritual integrity and which may hold important possibilities for the future.

Indian land policy shall seek the most rapid possible reduction of uneconomic and nonproductive administrative expenditures, particularly in connection with the management of heirship lands.

In view of the limited amount of funds available for the enlargement of the Indian land base, preference in the application of these funds shall be given to those reservations showing a readiness to co-operate in order to secure the advantages, and to those showing a critical shortage of resources; and within these reservations, preference shall be given to those communities definitely Indian in character.

In the process of simplifying the ownership pattern on Indian reservations, tribal funds, IRA land-acquisition appropriations, or other applicable funds may be used (in default of other and preferable methods) for the consolidation of Indian-owned lands whenever such use supplies an essential element in improving the economy of the tribe, and reducing costs of administration.

The acquisition of land for Indians shall be for Indian use and upon adequate evidence that it will be used by Indians. In all cases where it is practicable, the acquisition should be carried out in response to the request of the Indians and upon evidence furnished by them of their determination to use the land.

Funds accruing to tribes from the past or present disposal of capital assets shall be used to the largest feasible extent for the creation of new productive resources.

IV. BUILDING A RESERVATION PROGRAM OF LAND
CONSOLIDATION AND UTILIZATION

---O---

Any program of land consolidation and tenure having to do with Indian reservations and Indian lands must necessarily provide for Indian initiation and participation both in the preparation of the program and in its forward progress. All land transactions relating to the program shall be voluntary on the part of the Indians concerned. Therefore, much depends upon the attitude of councils and individual Indians whose voluntary and purposeful co-operation is necessary to the achievement of success for the enterprise.

Human beings, always and everywhere, desire to decide for themselves what is for their own welfare, otherwise they become mere passive recipients instead of active agents, or else active objectors. These proposed plans are primarily intended to be in the interest of the common welfare of the Indians and to hold for them appreciable values, yet they must wait upon Indian approval and acceptance for their effective operation. If the councils and tribes become interested in what they may be able to accomplish under the opportunities offered, and have intelligent advice and encouragement in their efforts, the building of reservation programs of land consolidation and utilization will become the centers of local educational awakening which may change the whole approach to Indian advancement.

The land program must be adapted to particular reservations. A type of program suited to one reservation may be useless or even harmful on another reservation. A land program for any reservation or for any Indian community or family must consider the actual difficulties which that reservation, community or family has experienced. Each reservation, each community, each family must make its own plans in the light of its own land needs, its own resources or lack of resources, the ability or lack of ability of its members to carry on farming, livestock, lumber or other operations efficiently.

Among the first questions to be considered are those relating to the initiation of the land program and to the agents and agencies to be enlisted in its service. The Department can and does herein announce general policies to be developed and employed in dealing with the matter. These policies furnish a working basis, limited by laws and regulations. Their operation is also limited by the degree of their acceptance by the co-operating agents and agencies, and especially by those most vitally concerned, the Indians themselves.

The Indians recognize that much is wrong with their present situation, but they do not know what to do about it. There are rules and regulations they do not understand, and which they doubtfully or grudgingly accept. There are other regulations they oppose because they see in them no relation to rational or accepted policies. They are working under a cloud of doubt and suspicion. They need a clarification of policies and of the relation of all regulations to such policies. They need the help of educational agents who understand the policies and the relation of the regulations to the policies.

The agents representing the Commissioner, who are in the field, or who go to the field as advisers and counsellors to the Indians, are expected to know the general policies and the relation of the regulations to them, and also to understand the working relationships of divisional agencies in the Washington Office. They are expected to understand present land conditions, what brought them about, and how they may be cured under accepted policies and with the active consent of the Indians. On any particular reservation the counsellor shall inform himself concerning local conditions and particularly concerning land tenure and use. In view of this knowledge, the counsellor should be able to suggest feasible consolidations and transactions necessary thereto as the beginning of a land consolidation and use program, and to show the Indians the desirability of it. The agents are expected to demonstrate an understanding of human nature, be acceptable to those they would advise and instruct, and to be ever ready to accept feasible ideas from the Indians as a means of leading them into a full understanding and active co-operation. No coercion in any form may be used. Their efficiency will be measured by the amount of Indian initiation and participation they inspire and allow to operate. They should bear in mind that this is a comparatively slow process, and that any attempt to speed the work in advance of Indian group desires will result in lost ground. There is no program to be "put over." There is one to be developed in co-operation with Indian thinking and activity.

who
to
and
the
ions,
les
on
tic-
-
3
3
to
asi-
-
.
1
ind
1 the
ere
ra-

When and as the counsellor agents have prepared the way, administrative agents shall immediately undertake the handling of the various transactions in full sympathy with accepted policies and in co-operation with counsellor agents and Indian councils.

Purpose. One of the first matters to consider in building a reservation land program is the question, "What do we want to do with the land?" This is a question every Indian group must answer for itself. On one reservation the Indians will want enough tribal grazing land so that each family can graze 30 head of cattle free and thus get started in the livestock business. On another reservation the Indians want to take care of 50 landless families by assigning each one 10 acres of good agricultural land to be used for gardens and winter feed for domestic stock. On another reservation the Indians would like to provide a steady source of work and income for the members of the tribe by setting up a tribal enterprise in lumber, grazing or agriculture. The first ingredient of success in any land program is the enthusiasm of the Indians who are determined to make that program a success.

Land Values. A second essential in a land program is to know exactly what the land is good for. Enthusiasm and determination will not grow cotton in Montana. The advice of extension agents, State agricultural college experts and successful local farmers should be patiently sought in deciding what kind of land use will bring the most gratifying returns. If most of the white wheat farmers in the locality have gone broke and lost their farms, there is no reason to hope that an Indian tribe will do any better in the

business of raising wheat. If the most successful farms in the locality use a certain variety of wheat and use one tractor for each 3,000 acres, these are facts that should be carefully considered in planning for Indian land use.

Labor and Capital. We must consider the different types of labor and the kinds and amounts of capital that are required to make a success of a given type of enterprise. A plan to assign homestead sites on tribal land to landless families is bound to be a failure if the building materials and the skills needed for home building are unavailable. Planning a tribal lumber project, for instance, involves a calculation of available funds to make advances of wages before the lumber is sold, a calculation of the capital investment needed for sawmills, etc. In short, land is only one element in any economic plan. The other elements, labor and capital, must be provided for in advance. Otherwise, the land acquired may be good for nothing except a certain amount of lease income.

Securing Tribal Land. Assuming that a definite and workable plan for the use of tribal land has been mapped out, the task now is to secure the necessary land. Such land may be secured (a) from non-Indians, and (b) from Indians. In either case, the question is raised, "How can the owners of the land which the tribe wants be induced to sell, exchange or transfer the land to the tribe?"

Tribal Purchase of Non-Indian Lands. A tribe may have tribal funds it would like to utilize for the purchase of land from non-Indians. In this case, the tribal authorities should arrange to secure options from

the owners of the land, specifying the price at which the land may be purchased. If sufficient funds are in the tribal treasury available for immediate expenditure by the tribal authorities, the tribe may purchase the land immediately. If the tribal funds are in the United States Treasury, it may be necessary to secure an appropriation by Congress to permit the use of such tribal funds for land purchases.

Tribal Acquisition of Non-Indian Lands by Means of Exchanges. A tribe may be able to secure land that it needs from non-Indians by offering in exchange tribal land that is less conveniently located for the purposes of the contemplated tribal enterprise.

Federal Aid in Land Acquisition. Where a tribe has insufficient assets of its own to secure the land it needs, either through purchase or through exchange, it may petition the Secretary of the Interior to set aside a certain amount of Federal land acquisition funds for use in helping the tribe to complete its land acquisition program. The Secretary in determining whether to grant such a petition will give primary consideration to three questions: (1) How badly do these Indians need additional land? (2) How sincerely do they want additional land, as evidenced by efforts and sacrifices on the part of Indians themselves to secure additional land? (3). How effectively have they acted to make the best economic use of their present lands? Tribal authorities, in presenting a request to the Secretary for the use of Federal funds in aid of a tribal program of land acquisition, should present the facts that will answer each of these three questions. Wherever possible, a list of the families that want additional land

should be submitted. If the tribe has already voted to use a certain amount of its own tribal funds in its land acquisition program, that fact should be presented. If any of the members of the tribe are co-operating with the tribal program by agreeing to exchanges of land, that factor also should be presented as evidence of the sincerity of the Indians concerned in building an effective land program.

Exchanges with Individual Indians. There may be Indian allotments and heirship lands within the area that the tribe would like to use for its project. If this is the case the tribe should consider how the area can be brought under tribal ownership without injuring the individual Indians who have holdings in the area. The simplest method of accomplishing this is usually through the exchange of lands. The tribe may designate various parcels of tribal land which are not needed for any tribal enterprise as available for exchange. Preference in selecting such parcels may then be given to those Indians who offer in exchange land holdings in the area marked out for the tribal project.

Purchases from Individual Indians. Where a tribe has funds in its tribal treasury or in the United States Treasury it may decide to use a portion of such funds to buy up lands from Indians who have holdings in the area under consideration. If the funds are in the United States Treasury the consent of Congress is necessary for their expenditure. The price to be paid to an allottee for his allotment must be mutually agreed upon between the tribe and the allottee. Where the land is in heirship status if the tribe and all the heirs are unable to agree among themselves on the terms of purchase the Secretary of the Interior may prescribe the method of sale and valuation.

It must be remembered that when an Indian sells his land to the tribe, the individual Indian loses as much land as the tribe gains. He may thereby deprive himself of the means of self-support and thus become a burden upon the Government or upon the tribe or his family. Sales of lands by Indians even to the tribe, therefore, are to be discouraged except under unusual circumstances. Some of the unusual circumstances that justify sales of Indian land are the following: (1) Where the Indian vendor has other land ample for his needs. (2) Where the Indian vendor is by reason of old age or some personal disability unable to make use of the land offered for sale. (3) Where the Indian vendor has left or intends to leave the reservation permanently and agrees to surrender his membership in the tribe. (4) Where the land involved is in heirship status with many interested heirs, thus creating a situation where Indian use of the land is difficult and the handling of leases is expensive.

Putting the Land into Use. When the necessary land has been secured, the tribe should be ready to embark immediately upon its agreed land program. If forethought has been applied to the problem of land use, there should be no occasion for delay at this stage. Proper ordinances or resolutions covering the use of the land should be on the books by this time, the selection of applicants for land assignments for employment or for grazing privileges, depending upon the type of tribal project undertaken, should be under way. Definite responsibility for supervising the use of the land to see that the agreed program is faithfully carried out should be fixed. Details of a credit program for the enterprise should

be settled. If the tribal authorities have taken care of all these matters in advance, no days will be lost in putting the land to the use that the tribe has planned.

Simplifying Individual Landholdings. Aside from any definite tribal land project, the tribe should be interested in helping its members to simplify their landholdings. Such simplification will make it easier for Indians to use their own lands and thus raise the standard of living on the reservation. At the same time such simplification will cut down the amount of time and trouble that heirs in a complicated estate have to take in agreeing upon what to do with their land, and it will likewise cut down the amount of trouble that the agency staff must spend on these estates, time which might better be spent on constructive services of help to the tribe.

Tribal Aid in Land Simplification. Where the tribe has plenty of cash, the purchase of complicated heirship estates by the tribe may offer the simplest solution of the heirship problem. (For example of such transaction see page ____.) Where the tribe has plenty of tribal land the simplest solution may be to have the tribe offer solid tracts of land to individual Indians in exchange for heirship interests. (See page ____.) Where the tribe has neither available funds nor available tribal lands the responsibility for simplifying landholdings must rest primarily with the Indians concerned. But even here the tribe may be of service by setting up a committee with the specific task of working out land transactions among individual Indians, in co-operation with agency officials.

Individual Transactions to Simplify Landholdings. There are various ways in which individual Indians may co-operate voluntarily to simplify their landholdings. One way is through exchange. Another way is through the buying out of other heirs by one or two of the heirs in a given estate. A third way is through the partition of estates, where the number of interested heirs is not too great. Examples of these various methods of land simplification are given at pages _____ of this handbook.

Individual Transactions to bring Land into Indian Use. A tribe that seeks to raise its standard of living by bringing an increased amount of land into Indian use should encourage transactions between Indians that will bring into Indian use tracts that are now under lease to non-Indians or are standing idle or subject to trespass. Whether accomplished through gift, sale or exchange (see pages _____), the bringing of Indian land into Indian use is a positive contribution to a better standard of living for the entire reservation. The tribe which can show definite accomplishment in this field is entitled to special consideration when it asks for help from the Federal Government when acquiring new land. On the other hand, the tribe that does not show a real interest in bringing into Indian use the land it already has cannot very well ask non-Indian taxpayers to contribute additional land.

Stopping future Land Tangles. In addition to trying to clear up the land tangles that already exist, a tribe should be interested in preventing future land tangles. Wherever tribal land is assigned for use definite

rules should be laid down to prevent the breaking up of the land into uneconomical units. So far as possible the tribe should encourage the substitution of land assignments for trust allotments, since land assignment forms can definitely prevent the subdivision of estates into uneconomical units. Finally, a vigorous attempt should be made to educate members of the tribe in the importance of making wills that will not bring more trouble than the land is worth to the designated heirs. The tribe may even impose a graduated tax to discourage the uneconomic subdivision of Indian lands in the future.

A Suggested Plan for Land Exchange. This plan would apply to all reservations and would permit the exchange of original trust-allotted and inherited lands owned by non-residents on all reservations, for example: all Indians living at Lower Brule who own land interests at Pine Ridge would list them with the Superintendent of the latter reservation; and visa versa, resident Pine Ridge Indians would list their Lower Brule holdings with the Superintendent at Lower Brule. Through the mechanism of transferring title to the tribe where the land is located, a resident Indian at Lower Brule would secure an assignment of lands at Lower Brule of equal value to those surrendered at Pine Ridge; and conversely, a resident Indian at Pine Ridge would get land there. No monetary transaction would be involved, and the absentee equities which are at present so substantial and cumbersome a feature of Indian land tenure could be eliminated.

V. TECHNIQUES IN VARIOUS TYPES OF LAND TRANSACTIONS

Land Purchase by Tribe

1. An Indian Tribe wishes to purchase the restricted heirship interest of one of its members.
 - A. If under the IRA, the authority of the tribe to purchase is contained in Section 5 of that Act, and funds provided to acquire lands under that section would be applicable. The authority for an individual to sell is contained in Section 4 of the said Act of June 18, 1934 (48 Stat. 984).
 - B. If not under the IRA, special legislation would be necessary to authorize the tribe to purchase and to provide the funds, either tribal or gratuity. There is existing authority for individuals to sell.
 - C. Transfer of interest may be by deed, form 5-183, or by a form of "conveyance", approved by the Department of the Interior. (See Appendix for forms.)
 - D. A legal determination of heirs would be necessary before an interest in a trust or restricted estate could be sold.
 - E. Title examination of trust or restricted estates would be limited to the land records at the agency, in the Indian Office, or in the General Land Office.
 - F. There would be a fee for recording the deed in the county records.
 - G. The terms of payment would depend upon the nature of the funds from which payment would be made and upon the agreement between the parties at interest.
2. An Indian Tribe wishes to purchase an allotment of trust-patented land of one of its members.

The statements with respect to Item 1, relating to the tribe acquiring an inherited interest in trust land, are applicable in this case, excepting that no determination of heirs would be involved, and deed form 5-183a would be used.

3. A tribe wishes to purchase an allotment held by an Indian under a restricted fee patent.

The statements made with respect to Item 1 are applicable here except that no determination of heirs would be involved and deed form 5-183a would be used.

4. A Tribe wishes to purchase fee-patented land owned either by an Indian or a non-Indian.
 - A. Fee-patented land belonging to an Indian has the same status as it would have if it belonged to a non-Indian.
 - B. What is said under Item 1, subheadings A and B, would be applicable here.
 - C. A general warranty deed adopted by, or commonly used, in the State in which the land is located, and an abstract or other acceptable record of title should be furnished by the grantor at his own expense. Recording fees would be paid by agreement. The purchase would not be approved by the Department until the Solicitor finds the title and deed acceptable.

Exchanges Between the Tribe and Individual Indians

1. A Tribe wishes to acquire an heirship interest owned by a member and the member wishes to acquire in exchange an assignment of tribal land.

If Under IRA

- A. Attention is called to page 2 of the circular issued June 26, 1936 (See Appendix), and approved by the Assistant Secretary June 30, 1936, which relates to exchanges and assignments under Section 4 of the Act of June 18, 1934, and to a supplemental circular issued August 13, 1937, relating to the preparation of deeds. (See Appendix).
- B. The form of assignment referred to in Item 1, subheading C, apparently would also be applicable here.

If Not Under IRA

- C. This would merely constitute the exchange of allotted land or an interest therein for tribal land. It would be unusual to permit an exchange involving an undivided interest. After partition exchange could be much more readily effected; however, partition might be regarded undesirable.
- D. Exchange could be effected under the Act of April 23, 1904 (33 Stat. 297). There is attached copy of a circular containing instructions governing "changes in allotments" and containing the approved form of relinquishment. (See Appendix).

Under the existing policy of the Department, the approximate value feature would be considered even though not under the IRA, and the question of tribal interest would require appropriate consideration.

- E. There would be no recording on the local county records and no abstracting, and, therefore, no fees regardless of whether the lands are in or out of the IRA.
2. A Tribe wishes to acquire from a member an allotment of trust-patented land and the member wishes in exchange an assignment of tribal land.
 - A. The statements made under V, 1, apply.
 3. A Tribe wishes to acquire from a member an allotment of land held under a restricted fee and the member asks in exchange an assignment of tribal land.
 - A. The statements made under V, 1, apply. As a precaution, however, inquiry should be made into local records and report obtained whether there is anything recorded against the land, since the title is in the Indian owner subject only to the restrictions cited in the patent.
 - B. If the land is held by restricted deed, a deed from the individual to the tribe would be required.
 4. A Tribe wishes to acquire from a member his fee-patented land and the member asks in exchange an assignment of tribal land.
 - A. The owner would be required to submit a deed and abstract of title, just as would any other unrestricted property holder. The title and deed would require the approval of the Solicitor before the trade could be completed.
 5. A Tribe wishes to acquire from a member an allotment of trust-patented land and the member wishes in exchange a new allotment.
 - A. This is merely an exchange of allotted land for tribal land, and if under IRA can be effected in the manner set forth on page 2 of Circular No. 3162. (See Appendix.)
 - B. If not under IRA, it can be accomplished under instructions contained in Circular No. 1968. (See Appendix.)
 6. A Tribe wishes to acquire from a member an allotment of land held under a restricted fee, and the member wishes in exchange a new allotment.
 - A. If under the IRA, the exchange could be made in the manner specified on page 2 of Circular No. 3162. (See Appendix.)

- B. If not under the IRA, the exchange would be made under the Act of April 23, 1904 (33 Stat. 297), in the manner indicated in Circular No. 1968 (see Appendix).
- C. Slight variance in valuation need not be accounted for. A material difference in value would need to be balanced by cash or other acceptable consideration.

Land Purchases by the United States

1. The United States wishes to purchase the heirship interest of an Indian (presumably in trust for a tribe).
 - A. The conveyance could be made upon noncompetent Indian deed form 5-183a (see Appendix), regardless of whether in or out of IRA.
 - B. See Appendix for Solicitor's ruling with respect to the right of the Secretary of the Interior to sell inherited interests without the consent of the heirs.
2. The United States wishes to purchase an allotment of trust-patented land.
 - A. The procedure outlined under V-1-C, would apply. Not being inherited land, the Secretary would not have the right to sell without consent of the allottee. If the allottee were a minor, it would be necessary to have a legal guardian appointed.
3. The United States wishes to purchase an allotment held under a restricted fee.
 - A. Conveyance would be by noncompetent Indian deed form 5-183 (see Appendix). As a precaution, local records should be examined and a written report obtained to determine that nothing had been entered against the restricted fee-patented land. No abstract of title would be required and no fees except for recording the deed.
4. The United States wishes to purchase land owned in fee by an Indian or a non-Indian.
 - A. The vendor would be required to furnish a general warranty deed of the form required in the State where the land is located, and an abstract of title or other acceptable record of ownership.
 - B. Payment of abstracting costs would depend upon the terms of the sale.
 - C. The title would require the approval of the Solicitor, and the purchase would require the approval of the Department.

Exchange Between Tribe and Non-Indians

1. A Tribe wishes to acquire land owned by a non-Indian, who asks in exchange a fee title to land now held by the tribe.
 - A. If the land in question is under the IRA, the procedure applicable in this case is fully set forth on page 2 of Circular 3162, (see Appendix).
 - B. If the land is not under the IRA, special legislation would be necessary before tribal land could be exchanged for privately-owned property. The private owner would be required to furnish deed and abstract at his own expense. Title to the tribal land would pass by fee patent unless the legislation authorizing the exchange provided otherwise. Departmental approval of the title to the privately-owned land would be required before completing the exchange. Since we are operating for the benefit of Indians, we would accept for tribal land other lands of greater value, but if the lieu lands were less valuable than the tribal lands, the difference must be made up in cash or other acceptable consideration.

Exchanges Between Indians and Non-Indians

1. An Indian has an heirship interest in an estate. A non-Indian holds land in fee. The two individuals desire to exchange interests.

On IRA Reservations

- A. When the lands are of equal value an exchange may be made by deed from the Indian heir to the non-Indian if the interest of the Indian has been set apart by partition or if the Indian heir is the sole owner by inheritance. Title would pass from the Indian on approved Inherited Indian Deed Form 5-183, or by the issuance of a patent in fee to the non-Indian in event the inherited tract is in trust. The non-Indian would convey title by general warranty deed, accompanied by an abstract, to the United States of America in trust for the Tribe, or to the United States of America in trust for the individual.
- B. If the property of the Indian is more valuable than the non-Indian property, the non-Indian could add improvements to bring his property up to an equal value with the property of the Indian, or the Indian might agree to use the cash difference in values for improvements on the acquired land.
- C. If the property of the white man is of higher value and he still wished the exchange, it could be approved as though both values were the same, or the Indian might make payment in cash or kind to balance values.

- D. Where both properties are of equal value, no question could be raised against the exchange provided there were no other conditions that would prevent its approval.

On Reservations Not Under The IRA

- A. The exchange would be by patent in fee or approved Inherited Indian Deed Form 5-183 in favor of the non-Indian in exchange for deed 5-185 running directly to the Indian.* Where material differences occur in values a money payment might equalize such values. An abstract of title would be required for the non-Indian land.
2. An Indian has an allotment of trust-patented land. A non-Indian holds land in fee. The two individuals desire to exchange interests.

On IRA Reservations

- A. Where the lands are of equal or of approximately equal value the exchange may be made by approved deed (form 5-183a) from the Indian or in lieu of a deed from the Indian a patent in fee may be issued to the non-Indian, and by warranty deed accompanied by an abstract of title from the non-Indian to run to the United States in trust for the tribe, or to the United States in trust for the Indian.
- B. Where the Indian land is of greater value than the non-Indian land the difference in values can be converted into improvements on the land to be acquired by the Indian.
- C. Where the Indian's land is of less value, the exchange, if agreed to, may be made as in (a).

On Reservations Not Under the IRA

- A. The exchange would be by patent in fee or approved deed on form 5-183a from the Indian for a deed to the Indian on form 5-185 (47 Stat. 474) unless the lands are in different States in which event a restricted deed would pass title from the non-Indian to the Indian.
3. An Indian wishes to exchange allotted land held in restricted ownership with a non-Indian for land owned in fee by the non-Indian.

*In same Stats (47 Stat. 474).

On IRA Reservations

- A. Where the lands are of equal or approximately equal value, title would pass from the Indian to the non-Indian by approved deed (form 5-183a) in exchange for a deed running to the U.S.A. in trust for the tribe or to the U.S.A. in trust for the Indian.
- B. Where the Indian's land is less valuable than the land of the non-Indian, the difference could be adjusted as in 2, b, subtitle V.
- C. Same as in V-2-C.

On Reservations Not Under the IRA

- D. The exchange can be made by deed (form 5-183a) from the Indian for a warranty deed from the non-Indians on form 5-185.
- E. When there is a difference in values either way a money consideration may be paid to equalize the difference.

Exchanges of Allotted Lands Between Indians.

- 4. Two Indians desire to exchange allotments.

On IRA Reservations

- A. Where the allotments are held in trust and are of equal value or approximately equal, the exchange may be made by relinquishment on the back of the trust patent of each allottee in order that he may take in lieu of the relinquished allotment the allotment of the other. Act of April 23, 1904 (33 Stat. 297), and Act of June 18, 1934 (48 Stat., 984). New Trust patents would be issued for the lieu lands.
- B. The exchange may also be accomplished by deeds, form 5-183b by showing as consideration "other lands of equal value held in trust". The deed could run directly to the grantee in each case.
- C. If the allotments are held by restricted fee title, relinquishment could be made as in (a) or if deeds, 5-183b, (see Appendix), are used they should run from the grantor to the U.S.A. in trust for the tribe or to the U.S.A. in trust for the individual.
- D. When the lands are of different values, deeds (form 5-183b) may be used running from the Indians to the United States in trust for the tribe, or to the United States in trust for the individuals.

On Reservations not Under the IRA

- E. Exchanges may be made by either relinquishment and new trust patents, or by deeds running directly to the grantee (form 5-183b). Any difference in appraisements could be equalized by a money or a personal property payment.
5. Two Indians desire to exchange interests in heirship estates.
 - A. They may exchange their inherited interests in lands in practically the same manner as outlined for exchanges by original allottees in answer to question No. 4 above, either on reservations under the IRA or on reservations not under the IRA.
 6. An Indian wishes to exchange his trust allotment for the inherited land of another Indian.
 - A. If the inherited land is also in trust the exchange may be made by relinquishments on the trust patents and by the issuance of new trust patents for the lieu lands, or they may exchange by deeds, form 5-183b (see Appendix).
 - B. On IRA reservations exchange by relinquishment may be made under the acts of April 23, 1904 (33 Stat. 297) and June 18, 1934. (48 Stat. 984). On other reservations exchange by relinquishment may be made under the said act of April 23, 1904.
 - C. Where the lands are of different values, the exchange should be by deed, form 5-183b, running directly from the grantor to the grantee. The consideration should be shown as other trust land and improvements or other trust lands, livestock, etc., (actual consideration).
 7. An Indian wishes to exchange his land held in restricted ownership with another Indian for the inherited interest of the other Indian in certain land.

On IRA Reservations

- A. Assuming the inherited interest has been partitioned and is held by restricted deed, the exchange may be made by restricted deeds.
- B. If the lands are held in restricted ownership by deeds the exchange may be made by deeds, form 5-183b, running to the U.S.A. in trust for the tribe, or running to the U.S.A. in trust for the individual, a difference in appraisements, if any, to be adjusted by improvements on the less valuable tract.

On Reservations Not Under The IRA

- C. The exchange may be by deeds (form 5-183b) and a money or property adjustment made. When deeds are used they should run directly from the grantor to the grantee.

- (1) Administratively, exchanges which bring an outside Indian into ownership of an undivided interest with other heirs is not always desirable.

Gifts by Indians

1. An Indian desires to give an interest in heirship land,
 (a) to another Indian, (b) to a non-Indian, (c) to the tribe, or
 (d) to the United States.

On IRA Reservations

- A. An Indian may deed an inherited trust interest to another Indian of the same tribe by having the deed, form 5-183b, run direct to his grantee, and may deed an inherited restricted interest not held in trust, by having the deed, form 5-183b, run to the United States in trust for his grantee.
- B. Sales cannot be made from an Indian to a non-Indian (Section 4, IRA). However, an Indian if he is granted a patent in fee or a certificate of competency or obtains an order removing the restrictions from his inherited land may thereafter give the lands to any person or corporation or to the United States.
- C. To the tribe by making a deed, form 5-183, to the U.S.A. in trust for the tribe.
- D. To the United States by approved deed to the United States, form 5-183, for Indian school purposes. Opinion Attorney General February 7, 1935.

On Reservations Not Under The IRA

- E. An Indian may give his inherited lands to another Indian by approved deed, form 5-183, or form 5-183b. He may give his lands to a non-Indian by approved deed, 5-183. He may give his lands to the tribe or the U.S.A. by the same form of deed.
2. An Indian wishes to give an allotment of trust patented land (a) to another Indian, (b) to a non-Indian, (c) to the tribe, or (d) to the United States.

On IRA Reservations

- A. He may give away his trust allotment to another Indian by deeding the same to the individual, or to the United States in trust for the tribe and have the tribe assign it to the other Indian, Deed Form 5-183b.
- B. He may deed his trust allotment to a non-Indian only if he obtains a patent in fee.
- C. He may give his trust allotment to the tribe by deed to the United States of America in trust for the tribe, Deed Form 5-183a.
- D. He may deed his trust allotment to the United States on deed form 5-183a.
- E. Deeds conveying trust or restricted land must be approved by the Department in order to be valid.

On Reservations Not Under The IRA

- F. He may give his trust allotment to another Indian by approved deed, either on Form 5-183b or on Form 5-183a (unrestricted).
 - G. He may give his trust allotment to a non-Indian by approved deed, form 5-183a, or by warranty deed after obtaining a patent in fee.
 - H. He may give to the United States for the Tribe, or to the United States, his trust allotment by deed 5-183a.
3. An Indian wishes to give land held in restricted ownership (a) to another Indian, (b) to a non-Indian, (c) to the tribe, or (d) to the United States.

On IRA Reservations

- A. An Indian, may give his land held in a restricted ownership status to another Indian by deed to the United States for the individual, or to the United States in trust for the tribe with the understanding that the tribe will assign it to the individual, Deed Form 183b.
- B. An Indian may give his restricted lands to a non-Indian by deed if he first obtains a certificate of competency or an order removing the restrictions from his restricted land.
- C. An Indian may give his restricted land to the tribe by deed to the United States of America in trust for the tribe, - Deed form 5-183a.

- D. An Indian may deed his restricted land to the United States of America by deed 5-183a.
- E. Deeds conveying trust or restricted land must be approved in the Department.

On Reservations Not Under The IRA.

- F. An Indian, may, with the approval of the Secretary of the Interior, deed his restricted land:
 - (1) To another Indian by deed form 5-183b, or by unrestricted deed form 5-183a.
 - (2) To a non-Indian by deed form 5-183a, or by warranty deed after the restrictions are removed.
 - (3) To the tribe by approved deed to the United States in trust for the tribe, deed form 5-183a.
 - (4) To the United States by approved deed, form 5-183a.

4. An Indian wishes to give land held in fee.

- A. An Indian may give his land held in fee to an Indian or to a non-Indian or to the United States in trust for an Indian tribe or to the United States, without approval of his conveyance by the Secretary of the Interior, by the following forms of deeds: General warranty deed form: State Special Warranty Deed Form or State Quitclaim Deed Form.
- B. A gift of title to land held in fee would be the same whether on reservations under or not under the IRA.

Sales by Indians

- 1. An Indian wishes to sell an heirship interest, a piece of allotted land, or land held in fee, to the tribe. (see cases 1-4 under sub-title I.)
 - A. A case of this kind involving the different classes of lands in question is fully covered by items 1-4, inclusive, under sub-title III Land Purchases by the United States.
- 2. An Indian wishes to sell to the United States an heirship interest, a piece of allotted land, or land held in fee.
 - A. A case of this kind involving the different classes of lands in question is fully covered by items 1-4, inclusive, under sub-title III Land Purchases by the United States.

3. An Indian wishes to sell his heirship interest in an estate to a non-Indian.

On IRA Reservations

- A. An Indian, who owns an interest in heirship lands, is precluded under section 4 of the Act of June 18, 1934 (48 Stat. 984), from selling his trust or restricted inherited interest in lands to a non-Indian.

On Reservations Not Under the IRA

- B. An Indian may sell his inherited interest in Indian lands to a non-Indian by deed form 5-183, Act of May 27, 1902 (32 Stat. 245-275). If he is a minor, his interest must be conveyed by a legally appointed guardian's deed. If his interest is partitioned to him and definitely described so that a patent in fee can be issued, title may pass to his purchaser by patent in fee when the inherited land has a trust status, Act of June 25, 1910 (36 Stat. 855); otherwise, title would pass by deed on form 5-183, approved in the Department.
4. An Indian wishes to sell his allotment of trust land to a non-Indian.

On IRA Reservations

- A. An Indian cannot sell his trust allotment to a non-Indian. A sale or approval of a sale is precluded by section 4 of the IRA.

On Reservations Not Under The IRA

- B. An Indian may sell his trust allotment, with the approval of the Secretary of the Interior, to a non-Indian. Title would pass by a patent in fee to the purchaser under the act of June 25, 1910 (36 Stat. 855), or the sale could be by approved deed, form 5-183a, as authorized in the act of March 1, 1907 (34 Stat. 1015-1018).
5. An Indian wishes to sell his allotment of land in restricted ownership to a non-Indian.

On IRA Reservations

- A. An Indian may not sell his allotted land held in restricted ownership to a non-Indian. A sale or approval of a sale is precluded by Section 4 of the IRA.

On Reservations Not Under The IRA

- B. An Indian may sell his restricted allotment to a non-Indian; first, by approved deed, form 5-183a; secondly, by warranty deed after the restrictions have been removed through the issuance of an order removing the restrictions, or the issuance of a certificate of competency.
 - C. Act of June 25, 1910 (36 Stat. 855).
 - D. Special laws relate to the issuance of certificates of competency and removal of restrictions under the Five Civilized Tribes, Osage and Quapaw Agencies in Oklahoma.
6. An Indian wishes to sell his inherited interest in an estate to another Indian.

On IRA Reservations

- A. An Indian may sell his interest in inherited lands to another Indian by deed to the United States in trust for the tribe, or to the United States in trust for the individual. If the lands are held under a restricted deed, use form 5-183b.
- B. If the lands are held in a trust status, the other Indian may acquire the land by deed, form 5-183b, title running directly to the Indian purchaser, section 5 IRA. (Illustration: Frank Law case, - I. O. file 54112-38).

On Reservations Not Under IRA

- C. An Indian may sell his interest in inherited lands to another Indian by deed 5-183b, or 5-183, with or without a restrictive clause.
7. An Indian wishes to sell his allotment of trust-patented land to another Indian.

On IRA Reservations

- A. An Indian may sell his trust allotment to another Indian under section 5 of the IRA, that is, the land may be acquired for the other Indian under said section 5 by approved deed, form 5-183b, which may run directly to the purchaser.

On Reservations Not Under The IRA

- A. An Indian may sell his trust allotment to another Indian by approved deed, form 5-183b.

- B. If the purchaser is competent to hold unrestricted title, one Indian may deed his trust allotment to another Indian by approved deed, form 5-183a (Act of March 1, 1907 (43 Stat. 1015-1018)), or title may be passed to the purchaser by patent in fee under the act of June 25, 1910 (36 Stat. 855).
8. An Indian wishes to sell his allotment of land in restricted ownership to another Indian.

On IRA Reservations

- A. An Indian may sell his allotment of land held in restricted ownership to another Indian under section 5 of the IRA, by approved deed, 5-183b, provided the deed runs to the United States in trust for the individual, or to the United States in trust for the tribe with an assignment to the individual.
- B. If an Indian is competent to handle a sale without supervision he may, on application, obtain a certificate of competency or removal of restrictions order and thereafter make a deed which does not require approval, to his purchaser, either an Indian or a non-Indian.

On Reservations Not Under The IRA

- C. An Indian may sell his restricted allotment to another Indian by approved deed, form 5-183b.
 - D. If the purchaser is competent to hold unrestricted title, the conveyance may be by approved deed, 5-183a.
 - E. If the Indian owner is competent he may, on application, receive a certificate of competency or removal of restrictions order.
9. An Indian wishes to sell his land held in fee to another Indian.
- A. He may sell such land to another Indian by warranty deed which would not require Departmental approval.

VI. NATURE OF LAND TITLES

The titles by which Indians own lands are of various kinds, such as, "fee simple", "restricted fee simple", "trust interest", "right of inheritance - undivided interest".

A "fee simple" title can be acquired in various ways -

- 1. 1. By receipt from the United States of a patent conveying an unrestricted title.

e In-
ved
, or
the

ship

owner-
ed
trust
tribe

on he
removal
not
on-

in by

re

ceive
r.

ich

f

2. By receipt of a deed conveying an unrestricted title.
3. By receipt of a "trust patent" from the United States, followed by a "Certificate of Competency" terminating the trust as to the particular land described in the trust patent.
4. By receipt of a deed with a trust declaration or a restriction on alienation, followed by an order of the Secretary of the Interior terminating the trust or removing the restrictions. A "restricted fee simple" title can be acquired by -
 1. Receipt from the United States of a patent conveying title to land with a restriction against alienation, without the approval of the President or the Secretary of the Interior.
 2. Receipt of a deed conveying title with a restriction against alienation without the approval of the Secretary of the Interior.

A "trust interest" title can be acquired by -

 1. Receipt from the United States of a so-called "trust patent" in which the United States declares that it "does and will hold" the land described therein for a period therein stated (usually five, twenty or twenty five years) "in trust for the sole use and benefit" of the Indian named therein "or in case of his decease, of his heirs, according to the laws of" the State or Territory where such land is located. The trust period named in the trust patent may be extended by the President.
 2. Receipt of a deed with a declaration of trust.

A "right of inheritance" can be acquired -

 1. By being declared, by a court of competent jurisdiction or by an official authorized by law, to be an heir of a deceased person who owned land or had some interest in land at the time of his death. As to lands held by the United States "in trust" for such a deceased person the trust will attach to the inherited interest of the heir.
 2. By being the beneficiary named in the will of such a deceased person, upon the approval of the will by a court of competent jurisdiction, or by an official authorized by law. As to property held by the United States "in trust" for an Indian or his heirs, the Secretary of the Interior is empowered to determine heirs and to approve wills.

Where there is more than one heir the first order of the Secretary of the Interior merely determines the "undivided" share or interest of each heir in the whole estate. This may be followed by a "partition" or division of the property giving to each heir a separate part which he will own to the exclusion of the other heirs. When this division has been approved by the Secretary of the Interior and new patents, trust or fee, are issued for the separate parts the titles are no longer "inheritance rights"; they are ownerships in severalty.